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17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA**  
 19 **SAN FRANCISCO DIVISION**

21 MARC OPPERMAN, et al.,  
 22 Plaintiffs,  
 23 v.  
 24 PATH, INC., et al.  
 25 Defendants.

Case No. 13-cv-00453-JST

**CLASS ACTION**

**PLAINTIFFS' ADMINISTRATIVE MOTION  
 TO FILE UNDER SEAL & DECLARATION  
 OF FRANK BUSCH IN SUPPORT  
 THEREOF**

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Date: August 4, 2016  
 Time: 2:00 p.m.  
 Judge: Honorable Jon S. Tigar

1           **TO THE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

2           **PLEASE TAKE NOTICE** that, pursuant to Civil Local Rules 79-5(e) and 7-11, and the  
3 Honorable Judge Jon S. Tigar’s Civil Standing Order Governing Administrative Motions to File  
4 Materials Under Seal (the “Court’s Standing Order”) dated October 1, 2013, Plaintiffs hereby  
5 file this Administrative Motion To File Under Seal. Having reviewed the Court’s Standing Order  
6 and Local Rule 79-5(e), and having met and conferred on the subject with counsel for  
7 Defendants Apple, Inc. (“Apple”), Electronic Arts, Inc. and Chillingo Ltd. (collectively  
8 “EA/Chillingo”) Plaintiffs hereby move the Court to issue an administrative order that authorizes  
9 the sealing of the following documents, filed concurrently herewith:

10           **Plaintiffs’ Unredacted Opposition to EA/Chillingo’s Motion for Summary**  
11 **Judgment (the “Opposition”)**

12           **The Unredacted Version of Exhibit A to the Declaration of Frank Busch in**  
13 **support of the Opposition (“Busch Opposition Declaration”)**

14           **The Unredacted Version of Exhibit C to the Busch Opposition Declaration**

15           **Exhibit F to the Busch Opposition Declaration**

16           **Exhibit G to the Busch Opposition Declaration**

17           **The Unredacted Version of Exhibit H to the Busch Opposition Declaration**

18           The above-mentioned documents have been, in whole or in part, designated as  
19 confidential by Apple and/or EA/Chillingo. Defendant Apple has asked Plaintiffs to seal the  
20 unredacted versions of Exhibits A and C while authorizing Plaintiffs to file the redacted versions  
21 publicly. Additionally, this Court previously granted an administrative motion to seal the same  
22 portions of Exhibit H now at issue. (*See*, ECF No. 740). Defendants EA/Chillingo have asked  
23 Plaintiffs to file the entirety of Exhibits F and G under seal.

24           In deference to Defendants Apple’s requests, Plaintiffs have redacted all portions of  
25 Exhibits A and C designated as confidential, filed redacted and unredacted versions of these  
26 documents under seal, and have filed redacted versions publicly. It has done the same in regard  
27 to Exhibit H, consistent with this Court’s prior sealing order. (*Id.*) In deference to Defendant  
28

1 EA/Chillingo's requests, Plaintiffs have filed Exhibits F and G under seal in their entirety, have  
2 redacted the Opposition where it conveys information from said exhibits, filed under seal  
3 redacted and unredacted versions of the same, and have publicly filed the redacted version.

4 In doing the above, Plaintiffs do not represent that any portions of the documents at issue  
5 in this administrative motion are in fact confidential. Rather, Plaintiffs are filing this motion to  
6 seal in deference to Defendants' designations and this Court's rules, while expressly reserving  
7 the right to challenge them at a later date, if appropriate.

8 This Motion is based upon this Notice of Motion and Motion, together with the  
9 attached Declaration of Frank Busch.

10  
11 Dated: June 22, 2016

*/s/ Frank Busch*  
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**ATTORNEYS FOR OPPERMAN PLAINTIFFS**

**DECLARATION OF FRANK BUSCH**

**IN SUPPORT OF ADMINISTRATIVE MOTION TO SEAL**

I, Frank Busch, hereby declare as follows:

1. I am an associate at the law firm of Kerr & Wagstaffe LLP, one of the two law firms appointed by this Court as Plaintiffs' interim co-lead counsel in the above-titled putative class action lawsuit. I am a member in good standing of the State Bar of California, and I am admitted to practice before this Court. I submit this declaration in support of Plaintiffs' Administrative Motion to File Under Seal (the "Administrative Motion") Pursuant to Civil L.R. 79-5 & 7-11. I am personally familiar with the facts set forth in this declaration. If called as a witness, I could and would competently testify to the matters stated herein.

The following documents, which are attached to my Declaration in support of Plaintiffs' Opposition to Electronic Arts Inc. and Chillingo Ltd.'s (collectively "EA/Chillingo") Motion for Summary Judgment (the "Busch Opposition Declaration"), were produced by Defendant Apple, Inc. ("Apple") in this matter and designated as confidential:

**APL-PATH\_00000350-416 (Exhibit A to the Busch Opposition Declaration)**

**APL-PATH\_00000826-832 (Exhibit B to the Busch Opposition Declaration)**

**APL-PATH\_00000893-913 (Exhibit C to the Busch Opposition Declaration)**

**APL-PATH\_00028767-98 (Exhibit H to the Busch Opposition Declaration)**

2. On June 18, 2016, I e-mailed counselors for Apple identifying the first three above-mentioned documents and requested confirmation as to which should be redacted and/or filed under seal, in whole or in part, pursuant to this Court's rules for so doing. I did not identify the fourth above-mentioned document, as this Court had previously granted an administrative motion to seal certain portions thereof, which Plaintiffs have similarly redacted here. (*See*, ECF No. 740).

3. On June 20, 2016, counselors for Apple responded and stated that select portions of the following documents should be redacted and filed under seal, and that the remainder may be publicly filed:

1           **APL-PATH\_00000893-913 (Exhibit A to the Busch Opposition Declaration)**

2           **APL-PATH\_00000350-416 (Exhibit C to the Busch Opposition Declaration)**

3           In deference to Apple's request, I redacted the portions of the above-mentioned  
4 documents and have filed redacted and unredacted copies under seal with this administrative  
5 motion. I have also filed redacted copies publicly. In so doing, neither Plaintiffs nor this law  
6 firm make any representations about whether said documents are actually sealable or  
7 confidential, but expressly reserve the right to challenge such designation at a future date, if  
8 appropriate.

9           4.       The following documents, which are attached to the Busch Opposition  
10 Declaration, were produced by Defendants EA/Chillingo in this matter and designated as  
11 confidential:

12                   **EA0000201-02 (Exhibit F to the Busch Opposition Declaration)**

13                   **EA0000586-602 (Exhibit G to the Busch Opposition Declaration)**

14           5.       On June 18, 2016, I e-mailed counselors for EA/Chillingo identifying the above-  
15 mentioned documents and requested confirmation as to which should be redacted and/or filed  
16 under seal, in whole or in part, pursuant to this Court's rules for so doing.

17           6.       On June 20, 2016, counselors for EA/Chillingo responded and stated that the  
18 entirety of these documents should be redacted and filed under seal. In deference to  
19 EA/Chillingo's request, I filed the above-mentioned documents under seal with this  
20 administrative motion, as well as a version of the Opposition redacted at all portions wherein it  
21 conveys information from said documents, and an unredacted version of the same. I have also  
22 filed the redacted copy of the Opposition publicly. In so doing, neither Plaintiffs nor this law  
23 firm make any representations about whether said documents are actually sealable or  
24 confidential, but expressly reserve the right to challenge such designation at a future date, if  
25 appropriate.

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

3 Executed in San Francisco, California on June 22, 2016.

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5 /s/ Frank Busch

6 Frank Busch  
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**CERTIFICATE OF SERVICE**

I certify that on this day, June 22, 2016, I caused a copy of PLAINTIFFS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL & DECLARATION OF FRANK BUSCH IN SUPPORT THEREOF to be served on all counsel of record via the CM/ECF system.

**KERR & WAGSTAFFE LLP**

By: /s/ Frank Busch  
Frank Busch